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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 *In re Ex Parte* Application of
18 PALANTIR TECHNOLOGIES INC.,

19 Applicant,

20 For an Order Pursuant to 28 U.S.C. § 1782 to
Obtain Discovery from MARC L.
21 ABRAMOWITZ for Use in Foreign
Proceedings.

CASE NO.: 3:18-mc-80132-JSC

**MARC L. ABRAMOWITZ'S MOTION
FOR LEAVE TO FILE SUR-REPLY TO
PALANTIR'S *EX PARTE*
APPLICATION FOR AN ORDER
PURSUANT TO 28 U.S.C. § 1782
GRANTING LEAVE TO OBTAIN
DISCOVERY FOR USE IN FOREIGN
PROCEEDINGS**

1 Marc L. Abramowitz (“Abramowitz”) applies, pursuant to Civil Local Rule 7-11, for leave
 2 to file a sur-reply limited to addressing two issues raised for the first time in Palantir Technologies
 3 Inc.’s (“Palantir”) Reply brief.

4 Because Palantir’s opening brief failed to disclose several issues that are material to its *ex*
 5 *parte* application for discovery under § 1782, Palantir addressed many issues for the first time in
 6 reply. Abramowitz seeks leave to file a sur-reply because, in fairness, he should be permitted to
 7 respond to Palantir’s position on two of these issues: (1) Palantir’s newly-raised arguments
 8 concerning this Court’s order remanding the California case back to state court; and (2) Palantir’s
 9 new arguments concerning the 2012 Transfer Agreement. Sur-replies have been permitted in
 10 similar circumstances. *GT Nexus, Inc. v. Intrtra, Inc.*, 2014 WL 3373088, at *1 (N.D. Cal. July 9,
 11 2014) (granting party’s administrative motion to file a sur-reply to address raised for the first time
 12 in a reply brief); *see also Thompson v. Comm’r*, 631 F.2d 642, 649 (9th Cir. 1980) (“The general
 13 rule is that appellants cannot raise a new issue for the first time in their reply briefs.”).

14 Moreover, left unrebutted, Palantir’s new arguments could mislead the Court. *First*,
 15 Palantir misleadingly describes this Court’s order remanding the California case back to state court.
 16 The Court did not, as Palantir wrongly states, hold that the issue of who invented the allegedly
 17 “stolen” technologies was “beyond the scope of the California Action.” Reply at 3. It actually
 18 held the opposite, recognizing that this issue would be “a large part of the proceedings in this [the
 19 California] action.” *See Palantir Techs. Inc. v. Abramowitz*, 2017 WL 926467, at *6 (N.D. Cal.
 20 Mar. 9, 2017) (quotation marks omitted). *Second*, Palantir also raises new (and misleading)
 21 arguments with respect to the 2012 Transfer Agreement, which are rebutted in the attached sur-
 22 reply.¹

23 Although Abramowitz contests much else in the reply, his sur-reply will be limited to these
 24 three issues. Otherwise, Abramowitz rests on his opposition.

27 ¹ Because arguments about the terms of the 2012 Transfer Agreement implicate confidential
 28 information (according to Palantir), Abramowitz’s arguments are discussed in full, under seal, in
 the attached sur-reply.

1 Palantir has not consented to the filing of a sur-reply. *See* Wohlgemuth Sur-Reply Decl.,
2 Ex. J.

3
4 DATED: September 28, 2018

Respectfully submitted,

5 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

6 By: /s/ Jack P. DiCanio

7 Jack P. DiCanio

8 Attorneys for
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